IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

Crl.Rev.Pet.No. 3339 of 2007()

AGAINST THE ORDER DATED 16/08/2007 IN CMP 3919/07 IN CC.338/2007 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHERTHALA

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REVN. PETITIONER:

P.P.BABY,PARANAL HOUSE,PERUMBALLI P.O, MULANTHURUTHI.

BY ADV. SRI.BIJI MATHEW

RESPONDENTS:

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1. B.SUDHAKARA MENON,SOUPARNIKA,THURAVOOR P.O,CHERTHALA.

2. STATE OF KERALA REP.BY THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/09/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3339 OF 2007

Dated this the 14th day of September, 2007

O R D E R

Petitioner, who is the accused in C.C.No.338/07 before the JFCM-I, Cherthala for a prosecution under section 138 of the Negotiable Instruments Act, 1881, involving a cheque for Rs.92,000/-, challenges the order dated 16.8.07 passed by the Magistrate in CMP No.3919/07 as per which the complainant has been permitted to supply an omission regarding the actual borrowal of the loan amount in the proof affidavit which facts had been specifically pleaded in the complaint filed by him.

2. The learned counsel for the revision petitioner would assail the order submitting that the court below has allowed the complainant to fill the lacuna in the evidence adduced by the complainant and as a result of that serious prejudice has been suffered by the accused.

3. I cannot agree with the above submission. If the complaint also was deficient of an averment that the amount

was borrowed by the accused, there would have been some substance in the objection to the correction sought in the proof affidavit. But there is no dispute that the complaint does contain an averment to that effect. It was clearly an inadvertent omission which was supplied by the above correction petition. I see no ground to interfere with the order of the Magistrate. It goes without saying that the petitioner, if so advised, can have further cross examination of PW1 consequent to the correction allowed in the proof affidavit.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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